

<b>Adversary Proceeding Cover Sheet</b>		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS DALE PRESTON BENSON PATRICIA ANN BARTLEY BENSON		DEFENDANTS CITIFINANCIAL, INC.
ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NO.) Roland S. Carlton, Jr., Esq. CARLTON LEGAL SERVICES, PLC 118 MacTanly Place Staunton, VA 24401 (540) 213-0547		ATTORNEYS (IF KNOWN)
PARTY (Check one box only) <input type="checkbox"/> 1. U. S. PLAINTIFF		<input type="checkbox"/> 2. U. S. DEFENDANT
<input checked="" type="checkbox"/> 3. U. S. NOT A PARTY		
CAUSE OF ACTION (Write a brief statement of cause of action, including all U. S. Statutes involved)  Motion to Determine Validity, Priority, or Extent of Lien on Real Estate, 11 U.S.C. 506, 11 U.S.C. 1322		
NATURE OF SUIT (Check the one most appropriate box only)		
<input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727 <input type="checkbox"/> 454 To Recover money or Property <input type="checkbox"/> 458 To obtain approval for the sale both the interest of the estate and of a co-owner in property <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523 <input type="checkbox"/> 455 To Revoke an order of confirmation of a Chap. 11 or Chapt. 13 Plan <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing cause of action <input type="checkbox"/> 498 Other (specify) <input checked="" type="checkbox"/> 435 To Determine Validity, Priority or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 457 To subordinate any allowed claim of interest except where such subordination is provided in a plan		
ORIGIN OF PROCEEDINGS (Check one box only)		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
<input checked="" type="checkbox"/> 1. Original Proceeding <input type="checkbox"/> 2. Removed Proceeding <input type="checkbox"/> 3. Reinstated or Reopened <input type="checkbox"/> 4 Transferred from Bankruptcy Court		
DEMAND N/A	NEAREST THOUSAND \$0.00	OTHER RELIEF SOUGHT: Declaration of unsecured debt; avoidance/release of Deed of Trust <input type="checkbox"/> JURY DEMAND
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>		
NAME OF DEBTOR DALE PRESTON BENSON PATRICIA ANN BARTLEY BENSON		BANKRUPTCY CASE NO. 10-51064
DISTRICT IN WHICH CASE IS PENDING Western District of Virginia		NAME OF JUDGE Honorable Ross W. Krumm, Chief Judge
DIVISIONAL OFFICE Harrisonburg, Virginia		
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>		
PLAINTIFF		DEFENDANT
DISTRICT		DIVISIONAL OFFICE
FILING FEE (Check one box only) <input type="checkbox"/> Fee attached		<input checked="" type="checkbox"/> Fee Not Required <input type="checkbox"/> Fee is Deferred
Date 8/31/2010	Print Name Roland S. Carlton, Jr., Esq.	
		Signature of Attorney (Or Plaintiff)  <u>x/s/ Roland S. Carlton, Jr.</u>

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

IN RE:           Dale Preston Benson  
                  Patricia Ann Bartley Benson  
                  *Debtor(s)*

**MOTION TO AVOID AND RELEASE  
DEED OF TRUST**

DALE PRESTON BENSON  
PATRICIA ANN BARTLEY BENSON  
*Plaintiff/Debtor(s)*

Case number: 10-51064

v.

Adversary No. \_\_\_\_\_

CITIFINANCIAL, INC.

Serve: CT Corporation System, Registered Agent  
4701 Cox Road, Suite 301  
Glen Allen, VA 23060

*Defendant(s)*

COMES NOW the Plaintiff/Debtors, Dale Preston Benson and Patricia Ann Bartley Benson, by counsel, pursuant to 11 U.S.C. §506, 11 U.S.C. §1322, and Bankruptcy Rule 7001, and respectfully represents unto the Court as follows:

1.       That this is a core proceeding and this Court has jurisdiction over this issue pursuant to 28 U.S.C. §157 and 11 U.S.C. §1334.
2.       That your Plaintiff/Debtors Dale Preston Benson and Patricia Ann Bartley Benson have filed a petition for relief under Chapter 13 of Title 11 of the United States Code on 06/25/10.
3.       The Debtors Dale Preston Benson and Patricia Ann Bartley Benson own real estate located at 3 Bartley Street, Staunton, Virginia. At the time of the bankruptcy petition filing, the recently appraised value of this real estate was Ninety Thousand Dollars (\$90,000.00). A copy of a recent real estate appraisal is attached as Exhibit A.
4.       The Debt of approximately Fifteen Thousand Eight Hundred Fifty Seven and 78 /100 Dollars (\$15,857.78), based upon a pre petition monthly statement, owed to Defendant Citifinancial,

Inc. is secured by a Deed of Trust on the Debtor's real estate of record in the Circuit Court of Augusta County, Virginia, record no 060015546 and was recorded on November 29, 2006.

A copy of the Defendant's Deed of Trust is attached as Exhibit B, and a copy of the recent monthly statement from defendant is attached as Exhibit C.

5. The aforesaid Deed of Trust was preceded by another Deed of Trust on the Debtor's real estate of record in the Clerk's Office of the Circuit Court of Augusta County, Virginia. The first Deed of Trust secures a debt owed to Beneficial Mortgage Co. of Virginia, record no. 060008547, and was recorded on June 29, 2006. Beneficial Mortgage Co. of Virginia is still the present noteholder secured by this Deed of Trust and the outstanding debt balance of the note is One Hundred Thirty One Thousand Eighty Seven and 81/100 Dollars (\$131,087.80) A copy of the first Deed of Trust is attached as Exhibit D, and a copy of the claim cover page filed in this case by Beneficial Mortgage Co. of Virginia is attached as Exhibit E.
6. Therefore, the debt owed to Defendant Citifinancial, Inc. is a wholly unsecured debt and the Deed of Trust of record in the Clerk's Office of the Circuit Court of Augusta County, Virginia, record no. 060015546 should be voided and released pursuant to 11 U.S.C. §506(d) and 11 U.S.C §1322.
7. In support of this motion, Debtor refers this Court to *In re Millard*, 414 B.R. 73 (D. Md. 2009); *Zimmer v. PSB Lending Corp.*, 313 F.3d 1220 (9<sup>th</sup> Cir. 2002); *Lane v. W. Interstate Bancorp*, 280 F.3d 663 (6<sup>th</sup> Cir. 2002); *Pond v. Farm Specialist Realty*, 252 F.3d 122 (2d Cir. 2001); *Tanner v. First-Plus Fin., Inc.*, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); *Bartee v. Tara Colony Homeowners Association*, 212 F.3d 277 (5<sup>th</sup> Cir 2000); *McDonald v. Master Fin., Inc.*, 205 F.3d 606 (3<sup>rd</sup> Cir. 2000); *Domestic Bank v. Mann*, 249 B.R. 831 (1<sup>st</sup> Cir. BAP 2000); *Wright*

*v. Commercial Credit Corporation*, 178 B.R. 703 (Bankr. E.D. Va 1995);*Elliott v. Citifinancial, Inc.*, Adversary Case 07-06064 (Judge Anderson, Western District of Va).

WHEREFORE, Debtor prays that this Court enter an Order, pursuant to 11 U.S.C. §506 and 11 U.S.C. §1322, which holds that the debt owed by plaintiff/debtors Dale Preston Benson and Patricia Ann Bartley Benson to defendant Citifinancial, Inc. is a wholly unsecured debt, which voids and releases the Deed of Trust of record in the clerk's office of the Circuit Court of Augusta County, Virginia, record no 060015546; and for such other and further relief as the Court, in equity, deems appropriate.

/s/ Roland S. Carlton, Jr.  
Counsel

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